

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:21-cv-20939-KMM

MARTINE SEVERE-SMITH,

Plaintiff,

v.

KILOLO KIJAKAZI,¹ *Acting Commissioner
of Social Security Administration, et al.*,

Defendants.

/

ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon United State Magistrate Judge Lauren F. Louis's Report and Recommendation ("R&R") (ECF No. 5). On September 23, 2022, this Court referred pretrial matters to Magistrate Judge Louis. *See* ECF No. 4. Thereafter, upon a *sua sponte* review of the record, Magistrate Judge Louis issued the R&R, recommending Plaintiff's Complaint (ECF No. 1) be **DISMISSED without prejudice** and with leave to amend, and that Plaintiff's Application (ECF No. 3) be **DENIED without prejudice**. R&R at 3. No objections to the R&R were filed, and the time to do so has now passed. The matter is now ripe for review. As set forth below, the Court **ADOPTS** the R&R.

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). The Court "must consider *de novo* any objection to the magistrate judge's recommendation." Fed. R. Crim. P. 59(b)(3). A *de novo* review is therefore required if a party files "a proper, specific objection" to a factual finding contained in the report. *Macort v. Prem, Inc.*, 208 F. App'x 781,

¹ Incorrectly sued herein as "Kiloko Kijakazi".

784 (11th Cir. 2006). “It is critical that the objection be sufficiently specific and not a general objection to the report” to warrant *de novo* review. *Id.*

Yet when a party has failed to object to the Magistrate Judge’s findings, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Keaton v. United States*, No. 14-21230-CIV, 2015 WL 12780912, at *1 (S.D. Fla. May 4, 2015); *see also Lopez v. Berryhill*, No. 17-CV-24263, 2019 WL 2254704, at *2 (S.D. Fla. Feb. 26, 2019) (stating that a district judge “evaluate[s] portions of the R & R not objected to under a clearly erroneous standard of review” (citing *Davis v. Apfel*, 93 F. Supp. 2d 1313, 1317 (M.D. Fla. 2000))).

Magistrate Judge Louis recommends dismissing this action because the Court lacks jurisdiction. R&R at 5. Namely, district courts only have jurisdiction to review *final decisions* made by the Commissioner of Social Security. *See* 42 U.S.C. § 405(g). Magistrate Judge Louis recommends that “because the Complaint does not unambiguously establish that Plaintiff has exhausted the administrative review process, the Court lacks jurisdiction over this social security matter and the matter should be dismissed without prejudice.” R&R at 6 (citing *Pierre v. Comm’r of Soc. Sec.*, No. 11-62408-CIV, 2012 WL 1066811, at *3 (S.D. Fla. Mar. 16, 2012), *report and recommendation adopted*, No. 11-62408-CIV, 2012 WL 1060154 (S.D. Fla. Mar. 28, 2012)). This Court agrees.

Accordingly, UPON CONSIDERATION of the Motion, the R&R, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Magistrate Judge Louis’s R&R (ECF No. 5) is **ADOPTED**. The Complaint is **DISMISSED WITHOUT PREJUDICE**.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of November 2022.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record